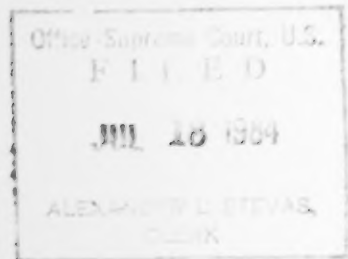


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84-214

No.



IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1984

ANTHONY RUGGIERO,

Petitioner

v.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, LOCAL NO. 773
AND SILVER LINE, INC.,

Respondents

**BRIEF OF RESPONDENT TEAMSTERS
LOCAL NO. 773 IN OPPOSITION
TO PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT**

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
QUESTIONS PRESENTED FOR REVIEW	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. PROCEEDINGS BELOW	2
B. FACTS	3
SUMMARY OF ARGUMENT	5
REASONS FOR DENYING THE WRIT	5
CONCLUSION	12

TABLE OF AUTHORITIES

Cases	Page
Baldini v. United Auto Workers, Local Union No. 1095, 581 F.2d 145 (7th Cir. 1978) . .	12
Brady v. Trans World Airlines, Inc., 401 F.2d 87 (3d Cir. 1968), <i>cert. denied</i> , 393 U.S. 1048, <i>rehearing denied</i> , 394 U.S. 955 (1969) . .	10
Buzzard v. Local Lodge 1040, 480 F.2d 35 (9th Cir. 1973)	12
Clayton v. United Auto Workers, 451 U.S. 679 (1981)	passim
Imel v. Zohn Manufacturing Company, 481 F.2d 181 (10th Cir. 1973)	12
Keppard v. International Harvester Company, 581 F.2d 764 (9th Cir. 1978)	12
McClain v. Mack Trucks, Inc., 494 F. Supp. 114 (E.D. Pa. 1980)	10
Miller v. General Motors, 675 F.2d 146 (7th Cir. 1982)	12
Neipert v. McKee & Company, 448 F. Supp. 206 (E.D. Pa. 1978)	11
Newgent v. Modine Manufacturing Company, 495 F.2d 919, 920 (7th Cir. 1974)	11
Pawlak v. Teamsters Local 764, 444 F. Supp. 807 (M.D. Pa. 1977), <i>affirmed</i> , 571 F.2d 572 (3d Cir. 1978)	10, 11
Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965)	13
Sandobal v. Armour and Company, 429 F.2d 249 (8th Cir. 1970)	13

TABLE OF AUTHORITIES — (*Continued*)

Tinsley v. United Parcel Service, Inc., 635 F.2d 1288 (7th Cir. 1980), <i>affirmed on remand</i> , 665 F.2d 778 (7th Cir. 1981)	9, 12
Willettts v. Ford Motor Company, 583 F.2d 852, 856 (6th Cir. 1978)	13
Winter v. Teamsters Local 639, 569 F.2d 146 (D.C. Cir. 1977)	10, 12

Statutes

Labor Management Relations Act, Section 301	2
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LOCAL NO. 773 IN OPPOSITION
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COURT OF APPEALS FOR THE THIRD CIRCUIT**

Pursuant to Rule 22.1 of the Rules of this Court, this memorandum is submitted on behalf of respondent, Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 773 (hereinafter "Union") in opposition to the petition of Anthony Ruggiero for a writ of certiorari to the United States Court of Appeals for the Third Circuit, seeking to review the decision of that court affirming the entry of summary judgment against him.

QUESTIONS PRESENTED FOR REVIEW

- I. Did the court of appeals err in affirming the grant of summary judgment against petitioner in his action against his employer for wrongful discharge and against his union for breach of the duty of fair representation, where petitioner made no attempt to utilize the internal union remedies available to him and offered no legal justification for his failure to do so?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. §185(a), states:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

This action was commenced by petitioner, Anthony Ruggerio, Jr., a former employee of respondent, Silver Line, Inc. (hereinafter "Company") and a member of respondent Union, in state court. This action was thereafter removed by the Union to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1441(b).

In his Complaint, Ruggerio alleged that the Company breached its collective bargaining agreement with the Union by its termination of his employment on or

about December 17, 1976 (J.A. 11). Ruggiero further alleged that the Union had breached its duty of fair representation by its failure to process his claims against the Company to arbitration (J.A. 15).

After answers were filed and discovery completed, the Union filed a motion for summary judgment. The district court granted the Union's motion on the ground that Ruggiero had failed to exhaust his internal union remedies. Later the Company filed a motion for summary judgment. This motion was not opposed by Ruggiero, "without prejudice to his rights to contest on further appeal the Court's earlier granting of summary judgment in favor of the Union" (J.A. 3). The district court accordingly entered an order granting summary judgment in favor of the Company.

Thereafter, Ruggiero appealed to the United States Court of Appeals for the Third Circuit from the entry of summary judgment against him. In its Memorandum Opinion of April 30, 1984, the court of appeals affirmed the ruling of the district court in all respects (J.A. 2-6). After carefully considering all of Ruggiero's contentions, the court of appeals stated that it was satisfied that the district court had not erred "in granting summary judgment in favor of the Union on the ground that appellant did not exhaust his internal union remedies" (J.A. 6).

Ruggiero's petition for rehearing was denied by the court of appeals in an Order dated May 17, 1984 (J.A. 7). Thereafter, Ruggiero filed the instant petition for writ of certiorari.

B. FACTS

Ruggiero was employed by defendant Company as a truck driver for approximately 13 years (J.A. 10). In December, 1976, Ruggiero was assigned by the Company to follow a certain delivery route. When Ruggiero refused to perform this assignment, claiming that it was unfamiliar to him, he was discharged.

Several days later, the Union business agent, Anthony Molinaro, arranged for a meeting to be held with representatives of the Company in order to discuss the Company's refusal to permit Ruggiero to return to work. At this meeting, Molinaro attempted to persuade the Company's General Manager, Kenneth Huber, to allow Ruggiero to return to his job but Huber refused to do so.

The collective bargaining agreement then in effect between the Company and the Union provided for a grievance and arbitration procedure for the resolution of disputes arising under said agreement. The first step of this procedure provided that:

All grievances must be made known in writing to the other party within five (5) working days after the reason for such grievance has occurred (J.A. 22).

Ruggiero never filed a grievance protesting his discharge pursuant to this contractual procedure.¹

Some eleven months later, the Union business agent received a letter from Ruggiero's counsel requesting that the grievance procedure be followed (J.A. 23). Molinaro then telephoned the Company and asked if it would reconsider its position and permit Ruggiero to return to work. When the Company refused to reinstate Ruggiero, Molinaro scheduled another meeting and arranged for an impartial mediator from the Federal Mediation and Conciliation Service to be present at such meeting. Ruggiero, however, appeared at this meeting with a stenographer and insisted that the stenographer be permitted to transcribe the proceedings. When he was told that the stenographer would not be permitted to attend what was intended to be an informal meeting on his behalf, Ruggiero refused to participate and the meeting was cancelled.

1. Although Ruggiero alleges that he did file such a grievance, this contested fact is immaterial because of subsequent events.

Under the Constitution of the International Union, Ruggiero had the right to file an appeal or charge with the Secretary-Treasurer of the Joint Council if he believed that his Local Union had acted improperly in processing his alleged grievance.² Ruggiero never filed any such charge or appeal. Ruggiero also had a right to appeal from the decision of the Joint Council to the General Executive Board of the International Union and from there to the Constitutional Convention. Ruggiero failed to file any such appeal. Thus, Ruggiero did not attempt to initiate even the first step of the internal union remedies available to him in order to allow the appellate bodies of the International Union to consider his claim that his Local Union had breached its duty to represent him fairly.

SUMMARY OF ARGUMENT

This petition for writ of certiorari should be denied since the issues it raises were recently settled by this Court; the decision of the court below is fully consistent with prior decisions of this Court and with the decisions of the other federal courts of appeals.

REASONS FOR DENYING THE WRIT

In his petition for writ of certiorari, Ruggiero asks this Court to review the decision of the court below affirming the dismissal of his action against the Union for an alleged breach of the duty of fair representation on the ground that he failed to exhaust his internal union remedies. Yet this precise question — whether an employee is required to exhaust available internal union remedies before bringing suit against his union for breach of the duty of fair representation — was recently

2. The Joint Council is an intermediate appellate body within the International Union composed of delegates from each of the local unions within that particular geographical area.

settled by this Court in *Clayton v. United Auto Workers*, 451 U.S. 679 (1981).

In *Clayton*, the plaintiff sued his union and his employer alleging a breach of the duty of fair representation and a wrongful discharge. The plaintiff sought reinstatement to his job and money damages in the form of back pay. The district court dismissed plaintiff's suit against both the union and the employer on the ground that he failed to exhaust his internal union remedies. The court of appeals affirmed the dismissal of Clayton's suit against the union but reversed the dismissal of his suit against the employer. This Court granted certiorari to resolve the conflict which had developed in the courts of appeals over whether an employee should be required to exhaust internal union appeals procedures before bringing suit against a union or employer under Section 301.

Although declining to "impose a universal exhaustion requirement", this Court held that under appropriate circumstances the failure of a plaintiff to exhaust his internal union remedies should result in dismissal of his suit for breach of the duty of fair representation. 451 U.S. at 689. In *Clayton*, this Court specified three exceptions to the general rule requiring exhaustion of internal union procedures. These three exceptions are:

1. Where union officials are so hostile to plaintiff that he will be denied a fair hearing on his claim;
2. Where the internal union appeals procedures are inadequate to award plaintiff the full relief he seeks in his Section 301 action or to reactivate his grievance; and
3. Where exhaustion of internal union procedures would unreasonably delay the plaintiff's opportunity to obtain a judicial hearing on the merits of his claim. *Ibid*.

If any of these exceptions are found to exist, said this Court in *Clayton*, the courts may properly excuse a

plaintiff's failure to exhaust. But, stressed this Court, in the absence of any of these exceptions, a plaintiff's failure to exhaust his internal union remedies should result in dismissal of an action against his union for breach of the duty of fair representation. In so holding, this Court emphasized the strong federal labor policy favoring the exhaustion requirement when it stated:

Where internal union appeals procedures can result in complete relief to an aggrieved employee or reactivation of his grievance, exhaustion would advance the national labor policy of encouraging private resolution of contractual labor disputes. In such cases, the internal union procedures are capable of fully resolving meritorious claims short of the judicial forum. . . . In either case, exhaustion of internal remedies could result in final resolution of the employee's contractual grievance through private rather than judicial avenues. 451 U.S. at 692.

In *Clayton*, this Court found that the plaintiff should have been excused from the exhaustion requirement since the internal procedures available to him were inadequate to award him a critical part of the relief he was seeking, namely, reinstatement to his job. In this case, by contrast, the internal union remedies available to Ruggiero were completely adequate to afford him the full relief he seeks in this Section 301 action. Whereas the plaintiff in *Clayton* was seeking reinstatement to his former job, Ruggiero did not seek such relief herein. Although Ruggiero asserts that he did request reinstatement to his former job (Brief of petitioner, pp. 36-37), this contention was properly rejected both by the district court and the court of appeals. In Count III of his Complaint, which states his cause of action against defendant Company, Ruggiero seeks only money damages (J.A. 19-20). Nowhere in his Complaint does petitioner request reinstatement to his employment with Silver Line, Inc. (J.A. 9-20).

Under the standards set forth by this Court in *Clayton*, the internal union remedies available to petitioner were completely adequate to afford him the full relief he seeks in this Section 301 action. These same internal union remedies have previously been reviewed by the courts and have been found to be fair and adequate. See *Tinsley v. United Parcel Service, Inc.*, 635 F.2d 1288 (7th Cir. 1980), *affirmed on remand*, 665 F.2d 778 (7th Cir. 1981); *Pawlak v. Teamsters Local 764*, 444 F.Supp. 807 (M.D. Pa. 1977), *affirmed*, 571 F.2d 572 (3d Cir. 1978); *Winter v. Teamsters Local 639*, 569 F.2d 146 (D.C. Cir. 1977).

Nor are any of the other exceptions to the exhaustion requirement set forth by this Court in *Clayton* applicable here. Although Ruggiero alleges that exhaustion of his internal union remedies would have been futile because the Union's officials "prevented a fair and effective appeal" (Brief of petitioner, p.23), Ruggiero presented absolutely no evidence in the district court to suggest that he could not have received a fair hearing from the appellate bodies of the International Union. Ruggiero's conclusory allegations that it would have been futile for him to pursue his internal union remedies are not sufficient to excuse him from the exhaustion requirement and were properly rejected by the court of appeals. See also *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87 (3d Cir. 1968), *cert. denied*, 393 U.S. 1048, *rehearing denied*, 394 U.S. 955 (1969); *Pawlak v. Teamsters Local 764*, *supra*; *McClain v. Mack Trucks, Inc.*, 494 F. Supp. 114 (E.D.Pa. 1980).

Likewise, the court of appeals properly rejected Ruggiero's contention that he should have been excused from the exhaustion requirement on the ground of unreasonable delay. Although Ruggiero was represented by counsel as early as November, 1977, his complaint was not filed until May, 1980 (J.A. 37). Thus, Ruggiero is hardly in a position to allege that exhaustion of his in-

ternal union remedies would have unreasonably delayed his attempt to obtain relief, especially since he did not take even the first step in the appeals process.

Although Ruggiero alleges that he would have been irreparably injured had he exhausted his internal union remedies (Brief for petitioner, p. 23), Ruggiero never presented any evidence to support this contention. Ruggiero would not have been injured had he availed himself of the internal union remedies open to him. Ruggiero could have obtained through these internal union procedures the full and complete relief he sought in this Section 301 action — money damages and reinstatement to his membership in the Union — had he established to the appellate bodies of the International Union that he had not been properly represented by his Local Union.

Finally, the court of appeals properly rejected Ruggiero's contention that he should be excused from the exhaustion requirement because he was not "aware" of such remedies (Brief of petitioner, pp. 23,24). See *Pawlak v. Teamsters Local 764*, *supra*; *Newgent v. Modine Manufacturing Company*, 495 F.2d 919, 920 (7th Cir. 1974); *Neipert v. McKee & Company*, 448 F. Supp. 206 (E.D. Pa. 1978).

In affirming the grant of summary judgment against Ruggiero, the court below properly applied the principles set forth by this Court in *Clayton*. The court of appeals correctly concluded that none of the exceptions set forth by this Court in *Clayton* were applicable, and that the district court's entry of judgment against Ruggiero was consistent with the national labor policy of "encouraging private resolution of contractual labor disputes." 451 U.S. 692.

This petition does not raise any novel or important question of federal labor law. To the contrary, the various contentions advanced by Ruggiero were settled by the decision of this Court in *Clayton*. In *Clayton*, this

Court set forth the standards to be applied in this type of situation. The court below properly applied those standards and there is no reason for this Court to review its decision.

Contrary to petitioner, the decision of the court below is fully consistent with prior decisions of this Court and with the decisions of other federal courts of appeals. Since the decision of this Court in *Clayton*, other courts of appeals have reaffirmed the applicability of the exhaustion requirement under the circumstances presented herein. See *Miller v. General Motors*, 675 F.2d 146 (7th Cir. 1982); *Tinsley v. United Parcel Service, Inc.*, *supra*. Moreover, the decision of the court below is squarely in accord with numerous decisions of other federal courts of appeals establishing that a member of a union must exhaust all internal union remedies prior to maintaining an action against his union for breach of the duty of fair representation. See, for example, *Keppard v. International Harvester Company*, 581 F.2d 764 (9th Cir. 1978); *Baldini v. United Auto Workers, Local Union No. 1095*, 581 F.2d 145 (7th Cir. 1978); *Winter v. Teamsters Local 639*, *supra*; *Imel v. Zohn Manufacturing Company*, 481 F.2d 181 (10th Cir. 1973); *Buzzard v. Local Lodge 1040*, 480 F.2d 35 (9th Cir. 1973).

Ruggiero contends that the decision of the court below is inconsistent with the decision of the Court of Appeals for the Eighth Circuit in *Sandobal v. Armour and Company*, 429 F.2d 249 (8th Cir. 1970). This contention, however, is without merit. In *Sandobal*, there was no issue concerning plaintiff's failure to exhaust his internal union remedies; the issue there, among others, was whether plaintiff had exhausted his remedies under the contractual grievance procedure, as required by *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965). In *Sandobal*, it is true that the court of appeals found that summary judgment was not appropriate where there was "substantial disagreement between the parties as to

whether plaintiff did attempt to comply with the grievance machinery and whether his efforts were blocked by the wrongful acts of the Company and the Union." *Ibid* at 257. In this case, by contrast, there is no such dispute. Ruggiero was not prevented from exhausting his internal union remedies by any wrongful acts of the Company or the Union; Ruggiero simply made no attempt to exhaust the internal union remedies available to him. Ruggiero's contention that he did attempt to exhaust his internal union remedies is without merit and confuses the requirement that a plaintiff exhaust the grievance procedure contained in the collective bargaining agreement, which was the issue raised in the *Sandobal* case, with the requirement of exhaustion of internal union remedies. See *Willetts v. Ford Motor Company*, 583 F.2d 852, 856 (6th Cir. 1978). In this case, Ruggiero made no effort to exhaust the internal union remedies available to him and summary judgment was properly entered against him.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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